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June 28, 2004

JUN 28 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Marlene H. Dortch, Esquire
Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, D.C. 20554

Re: Petition for Rule Making
FM Table of Allotments, Section 73.202(b)
Morro Bay and Oceano, California

Dear Ms. Dortch

Transmitted herewith, on behalf of Lazer Broadcasting Corporation, licensee of KLMM(FM), Morro Bay, California, are an original and four copies of its Petition for Rule Making, which seeks amendment of Section 73.202(b) of the Commission's Rules, the FM Table of Allotments, to reallocate Channel 231A at from Morro Bay to Oceano, California, as that community's first local radio transmission service and to modify the license of KLMM(FM) accordingly.

Should any questions arise concerning this matter, please communicate with this office.

Very truly yours,



Anne Goodwin Crump
Counsel for Lazer Broadcasting Corporation

Enclosures

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MB 04-130

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

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JUN 28 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b),) MM DOCKET NO. _____
Table of Allotments, FM Broadcast Stations.) RM - _____
(Morro Bay and Oceano, CA))

Directed to: Chief, Media Bureau

PETITION FOR RULE MAKING

Lazer Broadcasting Corporation ("Lazer"), licensee of Station KLMM(FM), Morro Bay, CA, by its attorneys, hereby respectfully requests that, pursuant to Section 1.420(i) of the Commission's Rules, the Commission amend Section 73.202(b) of its Rules, the Table of Allotments for FM Broadcast Stations, to reallocate Channel 231A from Morro Bay to Oceano, California, as its first local transmission service, and that the license for KLMM(FM) be modified to reflect the new community of license. With respect thereto, the following is submitted:

1. Lazer is proposing herein to delete the allotment of Channel 231A at Morro Bay, to allocate the channel to Oceano as its first local transmission service and to modify the license of KLMM(FM) to specify the new community of license. The proposed reallocation is in accordance with the Commission's policies as set forth in *Modification of FM and TV*

Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990). From the proposed reference point, Station KLMM(FM) will place the requisite city grade signal over the community of Oceano. See Engineering Report, attached hereto.

2. Further, the proposed change in community of license will not remove the only local transmission service from Morro Bay. Station KXTY(FM) also operates in Morro Bay. The proposed reallocation of Channel 231A is mutually exclusive with the continued operation of Channel 231A at Morro Bay.

3. Should the Commission grant this petition and modify KLMM(FM)'s license accordingly, Lazer will timely file an application for construction permit to modify its licensed facilities to implement the reallocation. After grant of such an application, Lazer will timely construct the modified facilities. Thus, Lazer proposes to amend Section 73.202(b) of the Commission's rules as follows:

<u>Community</u>	<u>Channel Number</u>	
<u>Present</u>	<u>Proposed</u>	
Oceano, CA	-----	231A
Morro Bay, CA	231A, 259A	259A

4. The Commission has developed a four-part test to determine whether it should grant a station's petition to amend the Table of Allotments under Section 1.420(i) of the Commission's Rules. First, the proposed new city of license must qualify as a "community." *Georgetown and Garden City, South Carolina*, 12 FCC Rcd 13394, 13395 (1997). Second, "the reallocation must result in a preferential arrangement of allotments pursuant to the Commission's change of

community procedures.” *Id.* Third, a *Tuck*¹ analysis is required if the proposed community is in a suburban area, and the station’s signal covers 50 percent or more of a nearby larger city’s Urbanized Area. *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352, 10354 (M.Med. Bur 1995) (new 70 dBu coverage of 50 percent or more of Urbanized area raises concerns regarding the validity of local service preference claim.) A *Tuck* analysis requires that the petitioner demonstrate the independence of the suburban community from the nearby larger city. In this instance, however, a *Tuck* analysis is not required because the 70 dBu reference arc covers no more than 20.4% of the Santa Maria, California Urbanized Area. Fourth, the channel allotment must be in compliance with the Commission’s minimum distance separation requirements as set forth in Section 73.207 of the Rules.

A. Oceano is a Substantial Community.

5. The community of Oceano is located in San Luis Obispo County, California. Oceano is most well known for the coastal sand dunes with which it shares its name, as they are some of the most extensive coastal dunes remaining in the entire state of California. Oceano has also been known since 1904 for its train depot, the only permanent stop on the Southern Pacific line between Guadalupe and San Luis Obispo. Today, Oceano has its own zip code and post office and is a growing community. The 2000 U.S. Census indicated that 7,422 people live in Oceano,² which represents a growth in population of 20.3% over 1990 and 65.7% over 1980.³

6. Oceano’s local government, the Oceano Community Services District, is run by an elected Board of Directors. Their mission is to provide the citizens of the District with quality municipal services including water, sewer, fire protection, and street lighting services.⁴ Oceano

¹ See, *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

² U.S. Census Bureau’s American FactFinder website, at <http://www.factfinder.census.gov>.

³ *Rand-McNally Commercial Atlas and Marketing Guide 1996* at 274.

⁴ Oceano Community Services District’s website, at <http://www.nvo.com/oceanocsd>.

is served by its own volunteer fire department and its own airport called the Oceano County Airport (FAA Identifier L52).

7. Oceano is home to two elementary schools, Oceano Elementary and North Oceano School.⁵ There are also several youth related services located in Oceano including a Head Start, a Boys and Girls Club, and a local Boy Scout troop.⁶ Additionally, Oceano has a number of community and civic organizations, including a food bank, a community center, an Elks Club and several religious organizations.⁷

8. There are many and varied businesses located in Oceano, including several restaurants, a pool hall, four grocery markets, two childcare centers, a beauty salon, a real estate agency, a jeweler and an antiques dealership.⁸ A number of these business establishments reference Oceano in their names, such as Oceano Beach Fish & Chips Restaurant, Oceano Market, and Oceano Migrant Child Care Center.

9. Recreational opportunities in Oceano include a State Vehicular Recreation Area called the Oceano Dunes (mentioned above), Pacific Adventure Tours, the Pacific Dunes Ranch Riding Stable, the Pacific Plaza Resort and the Great American Melodrama and Vaudeville, a theater that has been staging performances for 30 seasons.⁹

10. While Oceano is part of a larger network of coastal communities in San Luis Obispo County, it is clearly its own entity. Oceano has all of the attributes typically found in a thriving and independent locality. It is a growing community with its own local government, schools, businesses, cultural activities and community service organizations. As such, Oceano is in need

⁵ Great Schools website, at [http:// www.greatschools.net](http://www.greatschools.net).

⁶ Yahoo! Yellow Pages, at <http://www.yahoo.com>.

⁷ *Id.*

⁸ YellowBook website, at <http://www.yellowbook.com>.

⁹ Great American Melodrama and Vaudeville website, at <http://www.americanmelodrama.com>.

of its own local radio station to serve the needs of its expanding population.

B. The Proposed Reallotment Will Result in a Preferential Arrangement of Allotments.

11. The proposed reallotment of Channel 231A from Morro Bay to Oceano represents a preferential arrangement of allotments. In determining whether a reallotment is preferential, the Commission “compares the existing arrangement of allotments with the proposed arrangement of allotments...” *Georgetown and Garden City, South Carolina*, 12 FCC Rcd at 13395. Under the proposed reallotment plan, Oceano would receive its first local transmission service. Therefore, the plan triggers priority three set forth in *Revision of FM Assignment Policies and Procedures*, 90 F.C.C.2d 88, 92 (1990). On the other hand, even with the removal of KLMM(FM), Morro Bay would continue to be served by KXTY(FM), which has Morro Bay as its community of license. Furthermore, as a result of the proposed reallotment, KLMM(FM) will be able to serve an additional 34,720 people within its 60 dBu contour, representing an increase of 22.5%. While there may be a small decline in land area covered, there will be a substantial increase in the number of potential listeners, and the public interest will be advanced thereby.

1. A *Tuck* Analysis is Not Necessary.

12. The Commission requires a station to conduct a *Tuck* analysis if it proposes, in the reallotment plan, to place a city grade signal (70 dBu) over 50 percent or more of an Urbanized Area, which was not provided prior to the community switch. *Headland, Alabama, and Chattahoochee, Florida*, 10 FCC Rcd at 10354. In the instant case, the 70 dBu reference arc covers no more than 20.4% of the Santa Maria Urbanized Area as illustrated in Exhibit 1.5 of the Engineering Report attached hereto. Indeed, from any fully spaced site, KLMM’s city grade

signal would not reach as much as 50% of the Urbanized Area. Therefore a *Tuck* analysis is not necessary.

2. The Reallocation Complies with the Commission's Minimum Distance Requirements.

13. The reallocation of Channel 231A to Oceano complies with the Commission's minimum distance separation requirements, as contained in Section 73.207 of the Rules, as demonstrated in the attached *Engineering Statement*.

WHEREFORE, in light of the foregoing, Lazer respectfully requests that the Commission grant this petition for rule making, amend the FM Table of Allotments to reallocate Channel 231A from Morro Bay to Oceano and modify the license of KLMM(FM) accordingly.

Respectfully submitted,

LAZER BROADCASTING CORPORATION

By:



Harry C. Martin
Anne Goodwin Crump

Its Attorneys

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1300 North 17th Street
Eleventh Floor
Arlington, VA 22209
(703) 812-0400

June 28, 2004

ENGINEERING REPORT

Petition for Rulemaking to Amend §73.202(b)

**Reallocation of Channel 231A
Morro Bay, CA to Oceano, CA**

On behalf of KLMM(FM)

June, 2004

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MUNN-REESE, INC.
Broadcast Engineering Consultants
Coldwater, MI 49036

ENGINEERING STATEMENT

In Support of a Petition to Amend §73.202(b)

The office of Munn-Reese, Inc. has been retained to prepare this engineering statement in support of a petition to amend 47 C.F.R. Section 73.202(b), the FM Table of Allotments. Data contained in this report is responsive to the requirements of the Rules, as amended.

It is proposed to reallocate Channel 231A, 94.1 MHz, Morro Bay, CA to Channel 231A, 94.1 MHz, Oceano, CA and reserve the allotment for the licensee of KLMM(FM). As this proposal is solely mutually exclusive with the licensee's present allotment, the rulemaking is allowable under §1.420(i). The use of a special reference point will be employed for this allotment. As a result of this proposed Rulemaking, Oceano, CA will be allotted its first aural service. Morro Bay, CA will both continue have an aural service KXTY(FM), Channel 259A, 99.7 MHz, allotted to the community.

Exhibit 1.1 is a pertinent portion of the V-Soft™ Communications, FMContours™ spacing allocation study for Channel 231A from the special reference point. This point is identified by the NAD '27 coordinates of 34° 59' 20" NL; 120° 37' 56" WL. This point will be fully-spaced to all relevant stations within the allocation. From this location the entire community of Oceano falls within the 70 dBu (3.16 mV/m) City Grade Service reference distance of 16.2 km as seen in **Exhibit 1.2**. In addition, the special reference point affords Oceano unobstructed line of site coverage from the proposed site to the Oceano city reference coordinates. A terrain profile study has been included in **Exhibit 1.3**. A topographical map depicting the special reference point has been supplied in **Exhibit 1.4**. As seen on the topographical map, the special reference point is a viable site located on the outskirts of an industrial oil field.

No "Tuck" showings are required as the 70 dBu reference arc covers no more than 20.4% of the Santa Maria, CA urbanized area. A copy of the urbanized area coverage based on U.S. Census 2000 Datum has been included in **Exhibit 1.5**. Additional studies were conducted and no fully spaced site would serve more than 45% of the Santa Maria urbanized area.

Finally, the gain/loss areas expected from this move have been analyzed and both the proposed gain and proposed loss areas are fully served with substantially more than five aural services each. A copy of the present service contours and proposed reference service arcs has been included in **Exhibit 1.6**. Tabulations of stations providing aural services will be supplied upon request.

It is requested that 47 C.F.R. §73.202(b) be amended as follows:

<u>COMMUNITY</u>	<u>PRESENT</u>	<u>PROPOSED</u>
Oceano, CA	---	231A
Morro Bay, CA	231A, 259A	259A

MUNN-REESE, INC.
Broadcast Engineering Consultants
Coldwater, MI 49036

CERTIFICATION OF ENGINEERS

The firm of Munn-Reese, Inc., Broadcast Engineering Consultants, with offices at 385 Airport Drive, Coldwater, Michigan, has been retained for the purpose of preparing the technical data forming this report.

The data utilized in this report was taken from the FCC Secondary Database and data on file. While this information is believed accurate, errors or omissions in the database and file data are possible. This firm may not be held liable for damages as a result of such data errors or omissions.

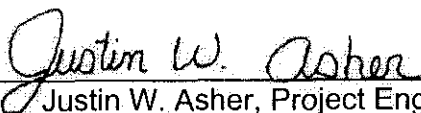
The report has been prepared by properly trained electronics specialists under the direction of the undersigned whose qualifications are a matter of record before the Federal Communications Commission.

I declare under penalty of perjury that the contents of this report are true and accurate to the best of my knowledge and belief.

June 16, 2004

MUNN-REESE, INC.

By 
Wayne S. Reese, President

By 
Justin W. Asher, Project Engineer

385 Airport Drive, PO Box 220
Coldwater, Michigan 49036

Telephone: 517-278-7339

MUNN-REESE, INC.
Broadcast Engineering Consultants
Coldwater, MI 49036

Exhibit 1.1

Tabulation of Commercial Spacings

REFERENCE	CLASS = A	DISPLAY DATES
34 59 20 N	Current Spacings	DATA 06-05-04
120 37 56 W	Channel 231 - 94.1 MHz	SEARCH 06-10-04

Call	Channel	Location	Dist	Azi	FCC	Margin
N. Lat.	W. Lng.	Ant	Power	HAAT		
KLMM	LIC 231A	Morro Bay	CA 31.59	338.2	115.0	-83.41
35 15 11	120 45 42	CX	0.890 kW	263 M		
	Lazer Broadcasting Corpora		BLH20021106AAO			
KISV	LIC 231B	Bakersfield	CA 179.40	73.3	178.0	1.40
35 26 17	118 44 22	CN	4.500 kW	406 M		
	American General Media Cor		BLH19960516KB			
KSPEFM	LIC 233B	Ellwood	CA 80.34	129.7	69.0	11.34
34 31 32	119 57 28	CY	0.880 kW	899 M		
	Citicasters Licenses, L.p.		BLH19890214KC			
KDB	LIC 229B	Santa Barbara	CA 104.97	123.4	69.0	35.97
34 27 58	119 40 37	CN	12.500 kW	265 M		
	Pacific Broadcasting Compa		BLH6774			
KHDV	LIC 230B1	King City	CA 163.13	341.4	96.0	67.13
36 22 48	121 12 57	CN	5.400 kW	214 M		
	Wolfhouse Radio Group, Inc		BLH19871223KC			
KCAQ	LIC-N 284B	Oxnard	CA 138.34	120.6	15.0	123.34
34 20 55	119 20 13	NCN	5.100 kW-N	450 M		
	Gold Coast Broadcasting Ll		BLH19980209KH			
KOKOFM	LIC 232A	Kerman	CA 200.61	14.0	72.0	128.61
36 44 29	120 05 08	CN	6.000 kW	100 M		
	Big Broadcasting, Inc		BLH19990909AAA			
KNAC.C	CP 228A	Earlimart	CA 165.24	48.9	31.0	134.24
35 57 30	119 15 00	CN	6.000 kW	54 M		
	Earlimart Educational Foun		BMPED19950920IB			
Commercial Channel Operating Educational						
KOKOFM	APP-N 232A	Kerman	CA 206.95	16.6	72.0	134.95
36 46 25	119 57 58	NCX	2.550 kW-N	157 M		
	Big Broadcasting, Inc.		BPH20020923ACG			
KOKOFM	APP-N 232A	Kerman	CA 206.95	16.6	72.0	134.95
36 46 25	119 57 58	NCX	2.550 kW-N	157 M		
	Big Broadcasting, Inc.		BPH20020923ACG			
KGENFM	LIC 233A	Hanford	CA 165.97	35.2	31.0	134.97
36 12 16	119 33 53	CN	3.300 kW	136 M		
	Azteca Broadcasting Corpor		BLH19970106KB			
KZLAFM	LIC-D 230B	Los Angeles	CA 249.41	109.0	113.0	136.41
34 13 55	118 04 18	DE	18.500 kW-D	956 M		
	Emmis Radio License Corpor		BLH20000315ACZ			

KISV 178 km Allocation Arc

10.2 km City Reference Arc

KSFE-FM 69 km Allocation Arc

KLMM - Oceano, CA
CH 231A - 94.1 MHz
Rulemaking Reference Point
NL 34-59-20 WL 120-37-56

KLMM Ref. Pt. \oplus

Guadalupe

Santa Maria

Nipomo

Arroyo Grande

Oceano

Exhibit 1.2
Special Reference Point
Community Coverage Requirement
Channel 231A - Oceano, CA

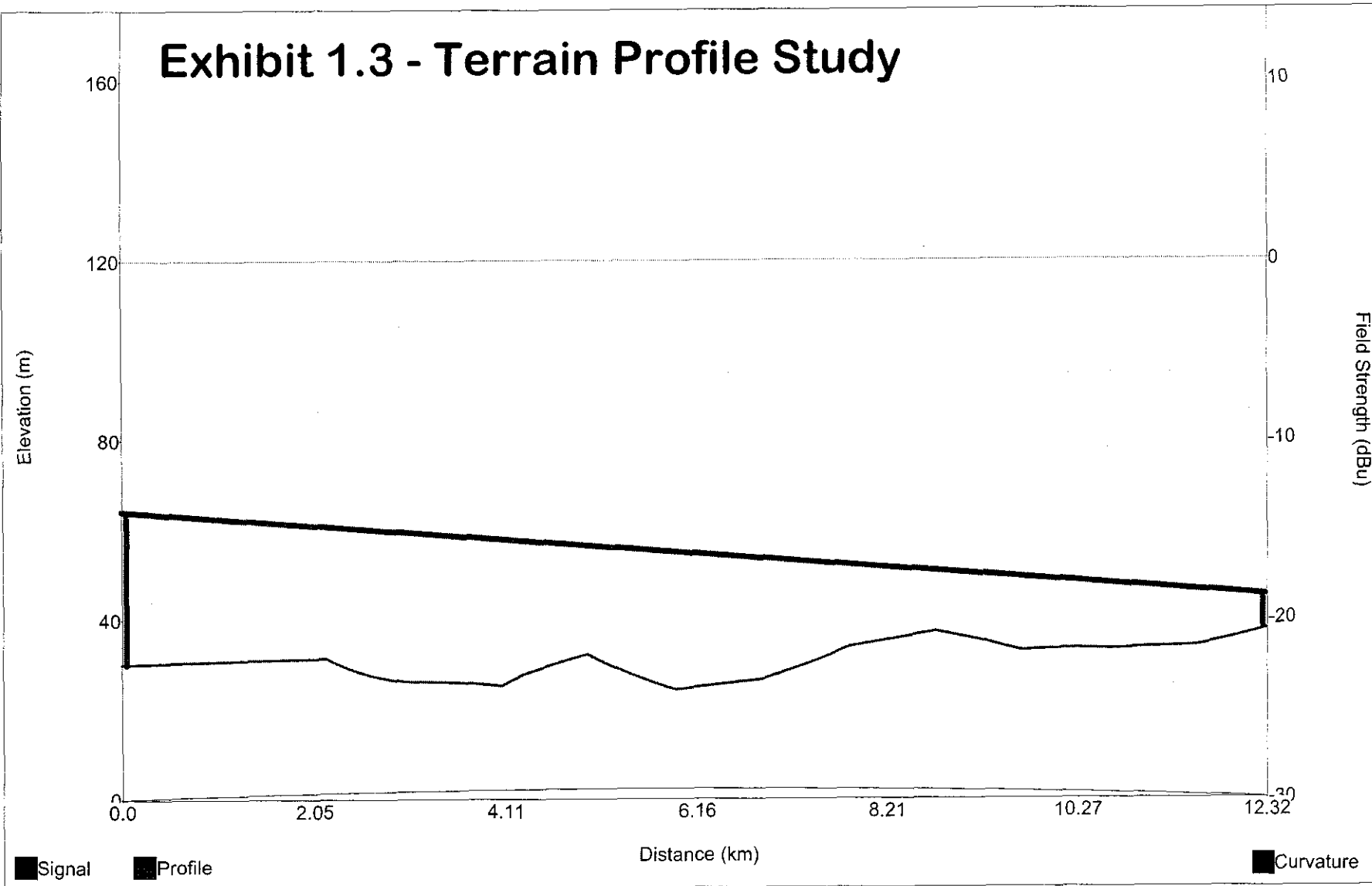
Scale 1:250,000



V-Sat Communications LLC ©



Exhibit 1.3 - Terrain Profile Study



Starting Latitude: 34-59-20 N
Starting Longitude: 120-37-56 W

End Latitude: 35-05-55 N
End Longitude: 120-36-41 W

Distance: 12.319930337 km
Bearing: 8.870 deg

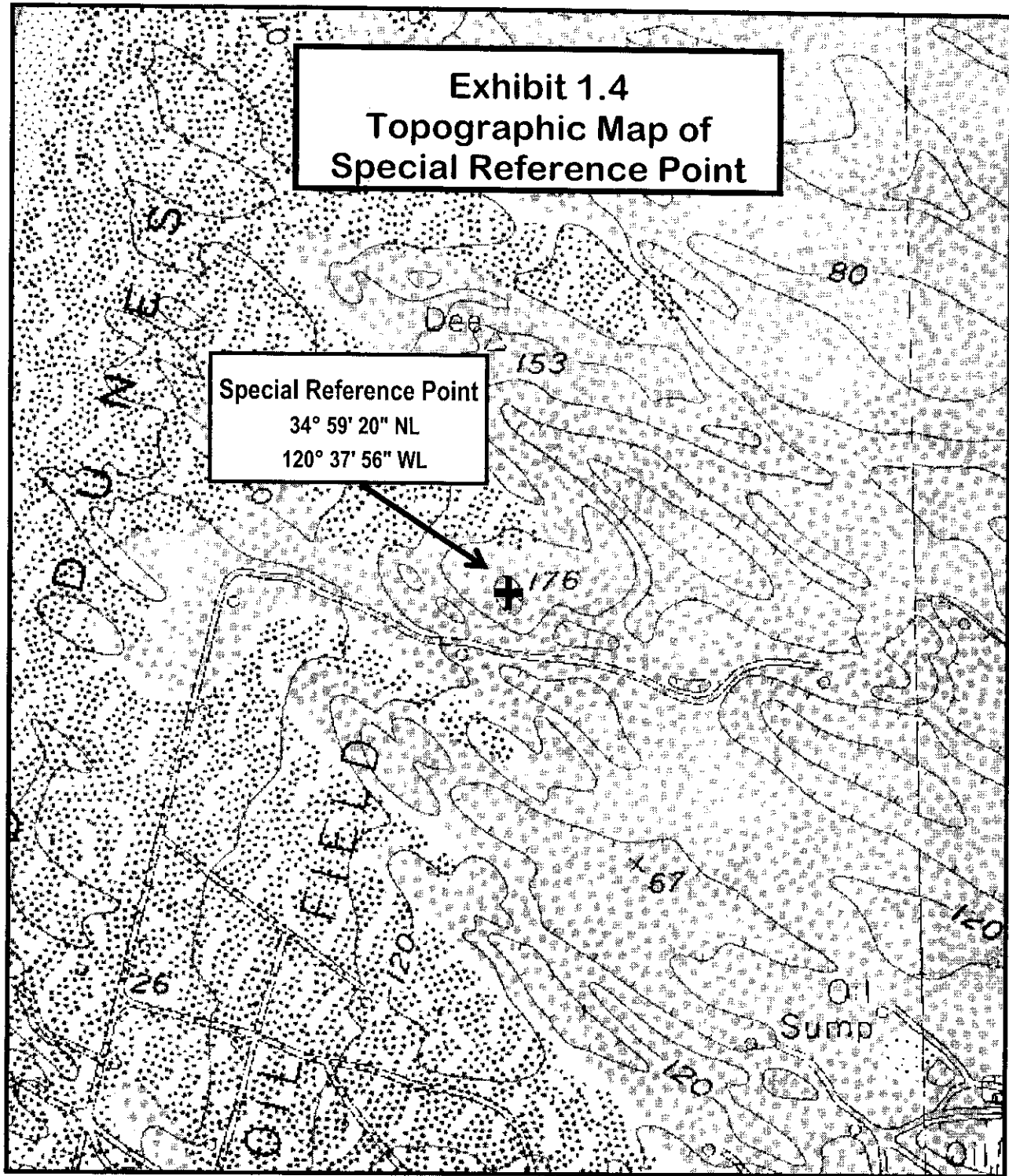
Transmitter Height (AG) = 30.0 m
Receiver Height (AG) = 9.1 m

Frequency = 94.1 MHz
Fresnel Zone: 0.6



Exhibit 1.4
Topographic Map of
Special Reference Point

Special Reference Point
34° 59' 20" NL
120° 37' 56" WL



Kilometers
0.0 0.1 0.2 0.3 0.4 0.5

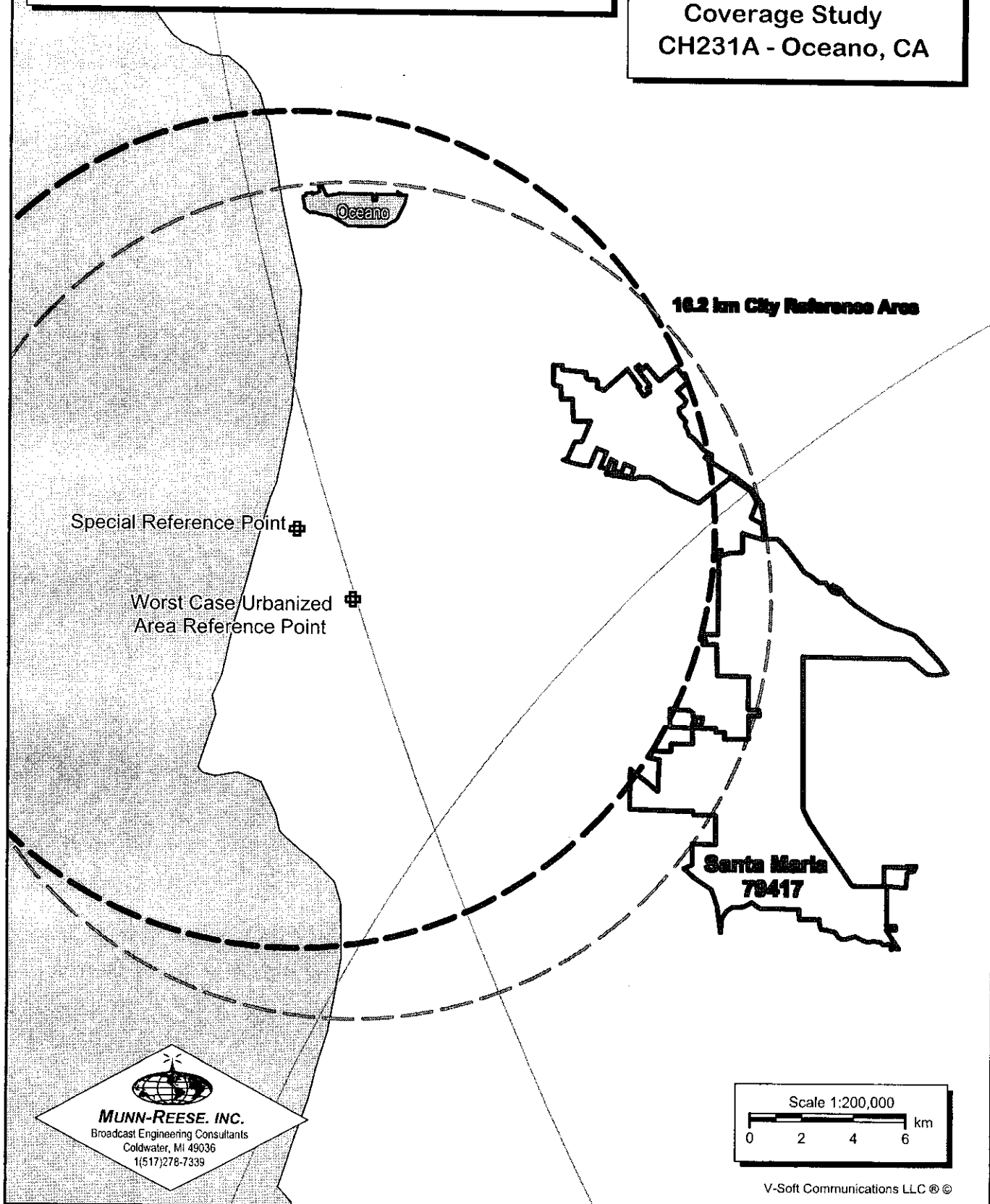
Miles
0.0 0.1 0.2 0.3 0.4 0.5

Point Sal, CA
USGS 7.5 minute
Quadrangle



Total Santa Maria Urbanized Area: 92.06 km sq
CH231A Special Reference Point Coverage: 18.78 km sq. (20.4%)
Worst Case Urbanized Area Reference Point Coverage: 40.32 km sq. (44.8%)

Exhibit 1.5
Urbanized Area
Coverage Study
CH231A - Oceano, CA



MUNN-REESE, INC.
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Present 60 dBu Contour
Total Population: 154,174
Total Land Area: 1644.93 sq. km

Present 70 dBu Contour
Total Population: 92,670
Total Land Area: 628.85 sq. km

60 dBu Reference Arc
Total Population : 188,894
Total Land Area: 1396.32 sq. km

70 dBu Reference Arc
Total Population: 58,805
Total Land Area: 440.86 sq. km

Exhibit 1.6 Present & Proposed Coverage Study CH231A - Oceano, CA

